IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 547

GEORGE S. MAY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOHN S. BOYLE, State's Attorney,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS.

The respondent, John S. Boyle, State's Attorney, presents this statement in opposition to the petition for Writ of Certiorari to the Criminal Court of Cook County, Illinois.

Opinion Below.

The Order of the Criminal Court of Cook County, Illinois, denying the motion to suppress evidence is included in the printed transcript of the record (R. 9-10).

Jurisdiction.

The petitioner relies upon Subdivision 3 of Section 1257 of Title 28 Judiciary and Judicial Procedure to give jurisdction to the Supreme Court of the United States to review

the judgment of the Criminal Court of Cook County. In opposition thereto, we cite the Order of the Supreme Court of Illinois included in the printed transcript of record (R. 12-13), where the Court found "Appellant has attempted to appeal from the denial of a petition to suppress evidence claimed to have been unlawfully seized and to return the same to the appellant. The record does not disclose any case, civil or criminal, in which the motion would apply, and it is not a civil action for the recovery of the property seized or the value thereof. The legality of the trial courts' action can be determined in a civil action for the recovery of the property or in a criminal case if the property seized is attempted to be used therein. Our jurisdiction depends upon whether the case presented to us comes within those kinds designated by Section 75 of the Civil Practice Act. No such action is shown to be pending in the trial court from which an appeal or Writ of Error may be prosecuted. We, therefore, have no jurisdiction." This was not a final order reviewable by the court. We submit that the order entered by the Criminal Court of Cook County, State of Illinois, denying the motion to suppress evidence and issuance of subpoenas for certain persons to appear and give evidence before the Grand Jury is not a final appealable order reviewable by this Court within the purview of Subsection 3, Section 1257 of Title 28 of the United States Code annotated.

Question Presented.

Does the action of the State Court, namely the Criminal Court of Cook County, State of Illinois, in denying a motion by petitioner to suppress certain evidence to prevent same from being submitted to a Grand Jury in a criminal proceeding against a person who is one of five claiming joint custody and control of the evidence but does not claim ownership, constitute a denial of the equal protection of

the laws of the State of Illinois within the purview of Section One of the 14th Amendment to the Constitution of the United States?

Statement.

The petitioner, George S. May, President and Director of the Tam O' Shanter Country Club, a Corporation, was arrested at said Club for possessing and operating gambling devices at said Club, and the gambling paraphernalia, which was in open view, was seized. In the Criminal Court of Cook County, Illinois, May filed a petition to quash his subpoena ad testificandum issued for the appearance of certain named third persons at the instance of the Grand Jury and to suppress the issuance of Grand Jury subpoenas that have or may issue against all persons to appear and testify concerning gambling, and to suppress as evidence all reference to the possession, use, and operation of the machines and devices. The petitioner, George S. May, stated in his petition, which is included in the printed transcript of record (2-9), that he and five other persons, Directors of the Corporation, were in joint possession and custody of twenty-seven slot machines and six other articles used for gambling. The petition does not claim ownership on the part of May nor does it ask for the return of the articles seized. The prayer of the petition was denied and the petition was dismissed by the Criminal Court of Cook County, Illinois, after hearing and argument. Thereafter an appeal was perfected to the Supreme Court of Illinois on the ground that the petition and ruling therein were a deprivation of personal Constitutional Rights against unreasonable Search and Seizure and being compelled to give evidence against himself. The Supreme Court of Illinois dismissed the appeal on the ground that the record does not disclose any case, civil or criminal, in which the motion could apply * * * therefore (we) have no jurisdiction."

ARGUMENT.

I.

The petitioner has set forth under his "reasons relied upon for the allowance of Writ of Certiorari" a quotation of Rule 38, 5a of this Court without giving any facts in support thereof.

In I of petitioner's brief, it is stated that certiorari should issue to the Criminal Court of Cook County, Illinois, because the Supreme Court of Illinois refused to review the order of the Criminal Court of Cook County, Illinois. This is not a reason under rule 38, 5a of this Court because the order of the Criminal Court of Cook County, Illinois, did not decide a federal question of substance; and it was decided in accord with the decisions of this Court.

Constitutional privileges are purely personal to the individual and he cannot claim the privilege of another person, or of the corporation of which he is an officer. *Hale* v. *Henkel,* 201 U. S. 43, 26 S. Ct. 370.

The interpretation placed on a state statute by highest court of that state is binding on the Supreme Court of the United States. *Hanover Fire Ins. Co.* v. *Carr,* 272 U. S. 494; 47 S. Ct. 179. *Guaranty Trust Co. of N. Y.* v. *Blodgett,* 287 U. S. 509; 53 S. Ct. 244. *Hartford Accident & Indemnity Co. et al.* v. *N. O. Nelson Mfg. Co.,* 291 U. S. 352; 54 S. Ct. 392. *International Union* v. *Wisconsin Rel. Bd.,* 336 U. S. 245; 69 S. Ct. 516.

The Supreme Court will not review a state court decision resting on an adequate and independent non-federal ground, though the decision also rests upon an erroneous view of federal law. *Radio Station WOW* v. *Johnson,* 326 U. S. 120; 65 S. Ct. 1475.

Chapter 38, sec. 342 of the 1949 Ill. Revised Statutes provides:

> "Every slot machine is hereby declared a gambling device and shall be subject of seizure, confiscation and destruction by any * * * local authority within whose jurisdiction it may be found."

Chapter 38, sec. 343 of the 1949 Ill. Revised Statutes provides:

> "Every owner, occupant lessee, mortgagor or other person in possession of any premises upon which any gambling device may be located and every person in the use, operation, lease or other possession of the same, shall be fined for the first offense; fined and confined in the County Jail, for the second offense and for the third offense fined and imprisoned in the penitentiary."

In *Bobel* v. *The People,* 173 Ill. 19, the Supreme Court of Illinois said:

> "The legislature has the power to prohibit the mere keeping in possession of such gambling devices as well as to prohibit their use."

The meaning of a state statute and the extent to which it may be limited are questions on which the highest court of a state has the final word. *Musser* v. *State of Utah,* 333 U. S. 95; 68 S. Ct. 397; *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468; 57 S. Ct. 857.

II. & III.

In Points II and II of petitioner's brief he has cited the Illinois Constitution which is identical with the Fourth Amendment to the United States Constitution and invoked them both in his behalf, citing numerous cases which apply to the "unreasonable searches and seizures" of the papers

and effects of the people in their homes and houses; and also cites the statute 456-A of Chapter 38, Ill. Rev. Stat. 1949 providing for return of property to "its legal owner."

The petitioner cannot complain of seizure and use in evidence of property not belonging to him. *People* v. *De Marios,* 401 Ill. 146. *People* v. *Exum,* 382 Ill. 204. *People* v. *Patterson,* 354 Ill. 313. *People* v. *Reid,* 336 Ill. 421.

IV.

In Point IV of his brief, petitioner cites cases in support of his contention that he was denied rights accorded to other citizens of Illinois. Most of those cases involve questions of racial discrimination, which is not the question here. Also argued is the dissenting opinion in *Wolf* v. *Colorado.*

Durkin v. *Hey,* 376 Ill. 292 deals with property belonging to the appellants and a violation of the due process clauses of both State and Federal constitution. No such question is raised here.

V.

In the argument for petitioner under this point the cases cited are again cases where the property belonged to the petitioners or defendants in the case, and they requested its suppression and *return* to its legal owner. Petitioner cites the case of *People* v. *Martin,* 382 Ill. 192, which applied to property belonging to the defendant, who asked for its return. That this is different from the present case may be seen by reading *People* v. *Exum,* 382 Ill. 204, previously referred to.

Conclusion.

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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